Employment Standards Act, 2000

Overview
Legal Disclaimer

- This presentation has been prepared to help employees and employers understand some of the minimum rights and obligations established under the *Employment Standards Act, 2000* (ESA) and regulations.

- **It is not legal advice.** It is not intended to replace the ESA or regulations and reference should always be made to the official version of the legislation.

- Although we endeavor to ensure that the information in this presentation is as current and accurate as possible, errors do occasionally occur.

- The ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation. Employers and employees may wish to obtain legal advice.
What is the *Employment Standards Act, 2000*?

- The *Employment Standards Act, 2000* (ESA) sets minimum standards for wages and certain other conditions of employment in Ontario.
- Employers and employees cannot contract out of or waive any of these employment standards.
- Employers can offer a greater right or benefit above these standards.
Who is an employee?

The ESA covers employees. An employee is either a:

• person who performs work for an employer for wages;
• person who supplies services to an employer for wages;
• person who receives training from the employer; or a
• person who is a home worker,
• …and includes a person who was an employee.
Exceptions, Exemptions and Special Rules

• The ESA does not apply to certain individuals, for example:
  – Federal jurisdiction (e.g. banks, airlines, etc.).
  – Some students in work experience programs.
  – Office holders (e.g. judges, politicians, etc.).
  – People who do community participation under the *Ontario Works Act, 1997*.

• Certain industries and/or jobs are exempted from particular minimum standards of the ESA or have special rules about how the minimum standards apply.

(For a complete listing, please see the ESA and its regulations.)
Employee or Independent Contractor?

Things to consider:
• Control – who makes decisions?
• Ownership of tools.
• Chance of profit or risk of loss.
• Do you have your own workers?
• Degree of responsibility or investment and management.
Where a Person is an Employee…

• If someone is an employee under the ESA, it is a violation of the Act for an employer to treat that person as any kind of worker other than an employee.

• For example, the ESA prohibits an employer from treating an employee as an independent contractor.
The Employment Standards Poster: Posting Requirements

• The Ministry has prepared and published a poster called, “Employment Standards in Ontario” which contains a brief summary of the main standards of the ESA and is available for free online at Ontario.ca/ESApaper.

• Employers are required to post the current version of this document in the workplace in a place where it is likely to come to the attention of their employees.

• Where the majority language in a workplace is not English, the employer is required to see if a translation is available from the ministry and if there is, post the translation along side the English poster.
The Employment Standards Poster: Copies to All Employees

• In addition to posting a copy of the ESA poster in the workplace, employers are required to give all employees who are covered under the ESA a copy of the ESA poster within 30 days of the date the employee is hired.

• If an employee requests a translation of the poster in a language other than English, the employer must provide the employee with both the English version and a translated version, if the Ministry has published a version in that language.
Basics

An employer must:

• Establish a recurring pay period and pay day.

• Pay wages by cash or cheque at the workplace or an agreed alternate location, or by direct deposit.

• Provide a wage statement, in written or electronic form, with all required information.

• Keep wage statement records for three years.

• Make only authorized deductions (e.g. Income tax, EI, CPP).

• May make deductions with employee written authorization; cannot deduct from wages for fault work even with authorization.
Minimum Wage

• From January 1, 2018 to December 31, 2018:
  – General $14.00
  – Homeworkers $15.40
  – Liquor Servers* $12.20
  – Students** $13.15

* Must regularly receive tips or other gratuities from their work

** Must be under 18 years of age working 28 hours or less a week, or during a school holiday.
Hours of Work

- **Daily limits:** Eight hours a day or the number of hours in a regular work day if it’s more than eight.
  - Longer hours allowed with a *written* agreement of employee.
- **Weekly limits:** 48 hours in a work week.
  - Longer hours allowed with a written agreement with the employee, *and*
  - Approval from the Director of Employment Standards.
- **Note:** Employer must give employee the most recent Ministry Information Sheet on Hours of Work and Overtime before written agreement is made.
Overtime Pay, Public Holidays

- **Overtime Pay:**
  - 1.5 x regular rate after 44 hours/week (most cases);
  - provisions for time-in-lieu with written agreement; and
  - provisions for averaging with written agreement and Ministry approval.

- **Public Holidays:** There are nine public holidays per calendar year:

- **To be entitled to the public holiday off with pay:**
  - Employees must work their scheduled shift before and after the public holiday unless reasonable cause (something beyond employee’s control prevents them from working).
Public Holidays – As of January 1, 2018

• Public Holiday Pay Calculation:
  – Regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period.

• Different Calculation
  – If an employee is on a personal emergency leave, on vacation, or a combination of the two for the entire pay period immediately preceding the public holiday.
  – If an employee was not employed during the pay period immediately preceding the public holiday.
Vacation & Vacation Pay - As of January 1, 2018

• Employees employed for less than 5 years:
  – **Vacation time** – Two weeks of vacation time after completion of Vacation Entitlement Year (VEY), and
  – **Vacation pay** – four per cent of gross wages earned in the VEY.

• Employees employed for 5 years or more:
  – **Vacation time** – Three weeks of vacation time after completion of VEY, and
  – **Vacation pay** – six per cent of gross wages earned in the VEY.
Vacation & Vacation Pay (continued)

• Employer can decide vacation timing, with the following restrictions:
  – No later than 10 months after the completion of the VEY.
  – Can only be in one-week, two-week, or three-week blocks unless the employee requests in writing to take vacation in shorter periods and the employer agrees in writing to this request.
Leaves of Absence – As of January 1, 2018

- Job protected, unpaid time off work for:
  - Pregnancy Leave (17 weeks)
  - Parental Leave (61 or 63 weeks)
  - Personal Emergency Leave (10 days per calendar year)
    - 2 paid days
  - Family Medical Leave (28 weeks in a 52-week period)
  - Family Caregiver Leave (8 weeks per relative per calendar year)
  - Critical Illness Leave
    - 37 weeks in a 52-week period – minor child
    - 17 weeks in a 52-week period - adult
  - Reservist Leave (deployment period)
  - Organ Donor Leave (13 weeks)
  - Child Death Leave (104 weeks)
  - Crime-Related Child Disappearance Leave (104 weeks)
  - Domestic or Sexual Violence Leave (10 days and 15 weeks per calendar year)
    - 5 paid days
  - Declared Emergency Leave
Leaves of Absence (continued)

- The Ministry has developed a medical certificate document that can be used for family caregiver leave, critical illness leave and/or family medical leave.
- For information on entitlement to Employment Insurance benefits/programs, please contact Service Canada.
Leaves of Absence *(continued)*

• The right to leave consists of the right to:
  – be away from work.
  – not be penalized in *any* way for being eligible to take a leave, intending to take a leave, or taking a leave.
  – be reinstated to job most recently held (if it still exists) or a comparable position (if the most recently held position does not exist) at the end of the leave.
  – continue to accrue credit for seniority, length of employment and length of service.
  – continue to participate in certain benefit plans (except Reservist Leave).
Notice of Termination

• Generally, when an employee has his or her employment terminated, he or she is entitled to written notice of termination or termination pay.

• **Written Notice:** There are certain requirements an employer must meet during the notice period. Once an employee has been continuously employed for three months:

<table>
<thead>
<tr>
<th>Period of Employment</th>
<th>Notice of Termination</th>
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<tbody>
<tr>
<td>less than 1 year</td>
<td>1 week</td>
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<td>1 year to less than 3 years</td>
<td>2 weeks</td>
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<td>3 years to less than 4 years</td>
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<td>After 4 years</td>
<td>1 week per completed year up to 8 weeks</td>
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• Employer can pay termination pay in place of working notice.

• Special rules for “temporary layoffs” and when 50 employees or more are terminated in a four-week period (“mass terminations”).
Severance Pay

- Employees whose employment is severed may be entitled to severance pay.
  - Qualification - Employed five years or more, and
    - Employer has $2.5 million payroll,
    - Or,
      - Permanent discontinuance of all or part of employer’s establishment and employee is one of 50 or more employees whose employment is severed within six-month period.

- Severance pay calculation:
  \[
  [\text{Regular wages for regular work week} \times \# \text{ of completed years of employment}] + [\text{regular wages for regular work week} \times (\# \text{ of completed months of employment for a year not completed ÷12})]
  \]
Tips and Other Gratuities

• Employers are not allowed to withhold or make deductions from their employees’ tips and other gratuities unless they are:
  – required by law,
  – court ordered, or
  – administering a tip pool (a collection of tips collected from employees that is redistributed amongst some or all of the employer’s employees. This includes tip outs.)

• Employers are not allowed to keep a portion of an employee’s tips and other gratuities to cover things like spillage, breakage, losses or damage, etc.

• Learn more at Ontario.ca/tipsandgratuities
“Temporary help agency” means an employer that employs persons for the purposes of assigning them **to perform work on a temporary basis for clients**.

“Assignment employee” means a person employed by a THA for the purpose of being assigned to perform work **on a temporary basis** for a client.

“Client” means a person or entity that enters into an arrangement with a THA where the agency agrees to assign or attempt to assign one or more of its assignment employees to perform work **on a temporary basis** for the client.

An employee assigned to receive training from a client for the purpose of performing work is considered to be assigned to perform work for the client.
Temporary Help Agencies and their Clients

Requires temporary help agencies to:
• Provide their assignment employees with information about the agency, about assignments with clients of the agency and provide information about rights and obligations under this Part of the ESA.

Prohibits temporary help agencies from:
• Charging certain fees to assignment employees and to clients.
• Imposing restrictions that prevent clients and assignment employees from entering employment relationships.
• Imposing restrictions on a client’s ability to provide a reference for an agency’s assignment employee.

Prohibits Clients from:
• reprising against assignment employees for such things as asking the client or the agency to comply with the ESA.
Temporary Help Agencies and Termination of Assignment – As of January 1, 2018

• A THA is generally required to provide an assignment employee with either one week’s written notice of termination of assignment, termination of assignment pay or a combination of the two, if:
  – the assignment employee is assigned to perform work for a client;
  – the assignment had an estimated term of three months or more at the time it was offered to the employee; and
  – the assignment is terminated before the end of its term.

The THA doesn’t have to provide notice of termination of assignment if the assignment employee is offered work with a client lasting one week or more during the notice period that is reasonable in the circumstances.
Reprisals

• An employer or anyone acting on their behalf is prohibited from reprising against an employee.

• A reprisal is when an employer or person acting on their behalf, intimidates, dismisses, or otherwise penalizes an employee or threatens any of the above because the employee:
  – Asks the employer to comply with the ESA.
  – Makes inquiries about his or her ESA rights.
  – Files a claim.
  – Attempts to exercise or exercises an ESA right.
  – Gives information to an Employment Standards Officer.
  – Participates in an ESA proceeding.
  – Is or will become eligible to take a leave, intends to take a leave, or takes a leave.
  – Is subject to a garnishment order.
Investigation & Inspection Process

• *Investigations* are usually started in response to a complaint, on an approved form, by an individual.

• *Inspections* are generally conducted on a proactive basis.

**Role of Employment Standards Officer:**

• Are assigned to investigate claims or conduct proactive inspections.

• Can *investigate* and conduct *inspections* by telephone, written correspondence, visit employer’s premises or require workplace parties attend a meeting.

• Bound by rules of natural justice:
  – Duty to act fairly and impartially.
Enforcement

• Employers who contravene the ESA can be ordered to:
  – Comply with the ESA.
  – Pay an employee the amount of wages owing (with some restrictions).
  – Reinstate and/or compensate an employee in certain cases (e.g. Reprisals or Leave of Absence contraventions [no maximum dollar amount]).
  – Pay an administrative cost.
  – Pay an escalating monetary penalty (Notice of Contravention).
    • $350 per affected employee for 1\textsuperscript{st} offence. (as of Jan. 1, 2018)
    • Can increase for 2\textsuperscript{nd} and 3\textsuperscript{rd} offences.
Provincial Offences Act

• Part I Certificate of Offence: $295*
• Part I Summons: Fine up to $1,000* (requirement to attend court).
• Part III Prosecutions:
  – Individuals: Fines up to $50,000* and/or jail term up to 12 months.
  – Corporations: Fines up to $500,000*.
• Name of anyone convicted of an offence and information about the offence, can be published on the internet.

* Plus Victim Fine Surcharge
Need More Information?

• Employment Standards Information Centre:
  416-326-7160 or 1-800-531-5551
  (Information is available in multiple languages)

• Visit:
  – Ontario.ca/EmploymentStandards for more information on employer duties and employee rights under the ESA.

• Ontario Government e-Laws website: Ontario.ca/laws